



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 21, 2022

IN THE MATTER OF:

Appeal Board No. 623687

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 9, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 19, 2022 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked as a full-time rehabilitation therapist for the employer and its predecessor in interest from 2007 until September 8, 2021; she earned \$60,000 per year. The predecessor in interest had promised its employees, including the claimant, a raise of five percent to become effective on January 1, 2022, when the merger with the employer herein took effect.

On September 8, 2021, the employer's new executive director held a meeting to discuss the merger and to ask the employees for a commitment to the new organization. He explained that aspects of their work would be changing and further explained that due to the organization's poor finances, he could not

guarantee that the raises promised by his predecessor would be given in January. The claimant did not like the tone of the meeting and did not want to stay on to learn what would occur in January. She resigned immediately following the meeting because she did not know what her job would entail or whether she would receive a raise once the merger was official.

OPINION: The credible evidence establishes that the claimant resigned because she anticipated that a promised raise would not be forthcoming and due to unknown changes to how she performed her work. The parties agree that the predecessor in interest promised its employees a raise to take effect on January 1, 2022. The testimony of both employer witnesses establishes that at the meeting in September, the new executive director did not entirely rule out the promised raise, but rather indicated only that the raise may not occur and could not be guaranteed at that point. The claimant could have worked until January 1, 2022 to learn whether the promised raise would be forthcoming and how her job would change but admittedly did not do so and instead quit immediately following the meeting. We do not find that Appeal Board No. 545405, relied upon by the Administrative Law Judge, is controlling in this matter. In so finding, we note the material distinction that the claimant in that case was promised a raise in six months and resigned only after he did not receive the promised raise at the end of those six months. Here, the claimant resigned in September upon learning that the raise promised to take effect that coming January raise was in doubt. Accordingly, the claimant's resignation was premature and, therefore, without good cause for Unemployment Insurance purposes.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective September 9, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER